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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Tennessee Wholesale Drug Company, Inc.--Claim
for Costs

File: B-243018.3; B-243019.3; B-243020.3;
B-243021.3

Date: February 19, 1992

Dennis J. Meaker, Esq., Waller, Lansden, Dortch & Davis, for
the protester.

Mark Chalpin, Esq., Department of Veterans Affairs, for the
agency.

Catherine M. Evans, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Claim for costs is dismissed where protester's basis for
claim at General Accounting Office (GAO) was agency's
initial refusal to consider any claim for protest costs
pending judicial resolution of whether GAO's award of such
costs is constitutional, and agency has now reversed its
position and will consider the claim.

DECISION

Tennessee Wholesale Drug Company, Inc. (TWD) claims the
costs of filing and pursuing its protests, which we
sustained in Tennessee Wholesale Drug Co., Inc., B-243018
et al., June 28, 1991, 91-2 CPD ¶ 9.

We dismiss the claim.

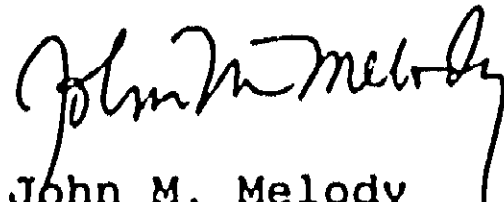
TWD's protests challenged the award of contracts by the
Department of Veterans Affairs (VA) for prime vendor
services in four VA hospital regions to Harris Wholesale,
Inc. under request for proposals (RFP) Nos. M5-Q2-91 and M5-
Q4-91, and to McKesson Corporation, under RFP Nos. M5-Q3-91
and M5-Q5-91. We found that the awards were improper based
on faulty technical and price evaluations, and recommended
that the agency reevaluate proposals. We also found TWD
entitled to the costs of filing and pursuing the protests.

On September 24, 1991, TWD submitted its claim for protest
costs to our Office, explaining that VA refused to consider
the claim on the ground that the constitutionality of our
Office's authority to award protest costs is currently under

review by a federal court in United States v. Instruments, S.A., No. 91-1574 (LFO) (D.D.C. June 26, 1991). The agency subsequently reconsidered its position, and on January 28, 1992, instructed TWD to resubmit the claim and supporting documentation.

Under our Regulations, 4 C.F.R. § 21.6(f)(1) (1991), cost claims initially are for resolution by the protester and the contracting agency. Since VA is considering the claim, we will not review the matter. Should the parties be unable to reach an agreement, TWD may request our determination at that time. 4 C.F.R. § 21.6(f)(2).

The claim is dismissed.

A handwritten signature in cursive script, appearing to read "John M. Melody".

John M. Melody
Assistant General Counsel